

H A U S M A N  
— & —  
P E N D Z I C K  
ATTORNEYS AT LAW

March 1, 2018

USMJ Judith C. McCarthy  
SDNY  
300 Quarropas Street  
White Plains, NY 10601-4150

**RE: Rivera v. Gardner**  
**17 CV 7935**

Judge McCarthy:

This office represent the plaintiff, Samuel Rivera, who was injured in an accident on October 3, 2017. I write to give the Court a brief update regarding this personal injury matter.

The parties requested the opportunity to mediate this case at the initial conference. At the time mediation was requested, it was believed that Mr. Rivera was healing from fractures, and had not sustained underlying damage to the soft tissues in the effected areas of his body. Over time, however, Mr. Rivera's pain and limitations have worsened where they should be resolving. He was recently sent for Magnetic Resonance Imaging (of his back, left knee and head), as it is suspected that he may have soft tissue damage/head trauma. Unfortunately, Mr. Rivera was unable to sit through the testing, and the test has to be rescheduled and conducted under anesthesia. This will require Workers' Compensation approval, which Mr. Rivera does not yet have, and in my experience, takes quite some time to obtain.

The problem that this is creating is that we will not know the extent of his injuries until the testing is conducted, at the earliest, and therefore, cannot evaluate Mr. Rivera's case appropriately at this juncture. Mediation would thus be premature at this point in time.

Moreover, if Mr. Rivera has sustained soft tissue injury/head trauma, he may need extensive treatment, and may be referred to a surgeon and require surgery. This puts both sides in an awkward position vis-a-vis the discovery schedule. Obviously, I do not want to prejudice my client, since his injuries may be much more extensive than originally believed. Moreover, defense counsel wants to be fully informed as to Mr. Rivera's condition, but probably does not want to perform multiple depositions and physical examinations, and certainly wants to have the relevant medical records prior to same.

I am not sure how best to handle this, but I do know that, at this point in time, it would be

premature to undertake settlement negotiations. That is why the parties agreed to a May date, in hopes that at this point the MRI testing would be completed, albeit that may not be the case. I hope that we may have a better idea regarding Mr. Rivera's treatment status at the point of the next conference, on March 26, 2018.

Thank you in advance for your time and consideration.

Very truly yours,

**HAUSMAN & PENDZICK**

By: 

ELIZABETH M. PENDZICK

cc: Eric Strober  
Rivkin, Radler